

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TRESSIE SALAZAR,

Plaintiff,

Case No. 1:10-cv-1127

v

HON. JANET T. NEFF

HOME DEPOT, INC.,

Defendant.

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OPINION AND ORDER

Plaintiff, proceeding pro se, initiated the present action against Defendant Home Depot, Inc., alleging discrimination, harassment, unlawful discharge, and violation of the Americans with Disabilities Act. On April 26, 2011, Defendant filed a “Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted” pursuant to FED R. CIV. P. 12(h)(2)(B), 12(c), and 12(b)(6) (Dkt 16). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R) on May 9, 2011, recommending that this Court grant Defendant’s Motion and dismiss Plaintiff’s claims (Dkt 22).

This matter is presently before the Court on Plaintiff’s “Objections to the Report and Recommendations [*sic*]” (Dkt 26). Defendant filed a “Response to Plaintiff’s Objections to the Report and Recommendation Recommending that Defendant’s Motion to Dismiss be Granted” (Dkt 27). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff articulates essentially two objections to the Magistrate Judge's Report and Recommendation: (1) that Plaintiff, after the issuance of the Report and Recommendation, amended her claim in the document titled "Plaintiff's Stating a Claim Upon Which Relief Can be Granted" (Dkt 24) such that it now states a claim upon which relief can be granted; and (2) that Plaintiff was unable to wait to file suit until she obtained a Right to Sue letter from the Equal Employment Opportunity Commission because of the statute of limitations (Dkt 26 at 1-2). Plaintiff's objections are without merit.

Plaintiff's first objection to the recommended dismissal of her case is based on her apparent belief that she amended her complaint by filing the document titled, "Plaintiff's Stating a Claim Upon Which Relief Can be Granted" (Dkt 24). As the Defendant's Response to Plaintiff's Objections indicates, Plaintiff has not, for various reasons, successfully amended her complaint (*see* Dkt 27 at 4-6). Moreover, Plaintiff's efforts are futile as, even considering the additional information provided in this document, she fails to make the necessary factual assertions to support her claims, but perpetuates the failing identified by the Magistrate Judge, to wit: merely asserting legal conclusions (R&R, Dkt 22 at 3).

Plaintiff's second objection raises an issue that was not referenced in the Magistrate Judge's Report and Recommendation as a basis for dismissal. Consequently, Plaintiff fails comply with 28 U.S.C. § 636(b)(1)(C) and W.D. Mich. LCivR 72.3(b), which require identification of a specific finding in the Report and Recommendation to which an objection is made.

Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58.

Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

IT IS HEREBY ORDERED that Plaintiff's "Objections to Report and Recommendations" [*sic*] (Dkt 26) are DENIED, and the Report and Recommendation (Dkt 22) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that "Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted" (Dkt 16) is GRANTED.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of the Judgment would not be taken in good faith.

Date: November 14, 2011

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge